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Identical letters dated 4 March 2011 from the Permanent Representative of Kenya to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to make reference to the International Criminal Court proceedings relating to Kenya and with regard to article 16 of the Rome Statute of the International Criminal Court.

In the wake of the 2008 post-election crisis, Kenya took a conscious decision to effect comprehensive political and social reforms to address the root causes of the crisis. Kenya has maintained a historically unprecedented pace of political and legislative reforms since then, culminating in the national referendum and the promulgation of the new Constitution in August 2010. This has paved the way for the establishment of the legal and judicial mechanisms necessary for the investigation and prosecution of the suspected perpetrators of post-election violence in line with the principle of complementarity under the Rome Statute. The premature and prejudicial naming of six individuals by the Prosecutor of the International Criminal Court, as bearing the greatest responsibility for the post-election violence, has slowed down the implementation of the new Constitution, the reform process and interfered with the delicate political climate. The ongoing International Criminal Court process has the potential risk to reignite violence, cause a breakdown of law and order and result in loss of human life in Kenya and the disruption of economic, peace and security activities in the fragile and volatile subregion, in which Kenya has played a significant stabilizing role. The African Union has taken cognizance of this very important fact and adopted a decision to have a request for deferral under article 16 of the Rome Statute placed on the agenda of the Security Council.

In the light of the foregoing there is an urgent need to defuse tensions which may result in the recurrence of violence and loss of life. Kenya requests the Security Council to take urgent measures to defer the proceedings of the International Criminal Court relating to Kenya, in accordance with the powers vested in the Council under article 16 of the Rome Statute. In making the request for deferral, Kenya is in no way condoning impunity. Rather, Kenya seeks to strengthen and uphold the principle of complementarity under the Rome Statute and facilitate continued implementation of the new Constitution and far-reaching reforms, while helping to forestall potential violence and chaos in Kenya and the subregion as a whole.

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In conclusion, as the International Criminal Court is scheduled to make a determination on whether summons should or should not be issued for those named by the Prosecutor in the third week of March 2011, I would like on behalf of the President of the Republic of Kenya, Mwai Kibaki, to request that you bring the present letter to the attention of all members of the Security Council and that it be issued as a document of the Council, as a matter of urgency.

(*Signed*) Macharia **Kamau**
Ambassador
Permanent Representative